Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-154

JOHN MARTINEZ,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITIONER'S REPLY TO GOVERNMENT'S MEMORANDUM IN OPPOSITION

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I.

"When a joint venture is shown," says respondent, "declarations of the co-venturers are admissible against other co-venturers." The difficulty with this proposition as applied here is that it ignores the petitioner's acquittal on the conspiracy count. The government should not be allowed to continue to argue that petitioner was a "co-ven-

turer" in the face of a specific jury finding to the contrary.[1]

III.

A case overlooked by respondent is *United States* v. *Doolittle*, 341 F Supp 163, 160 (DC Ga 1972),[2] which denied an evidentiary hearing because of a misreading of *United States* v. *Morgan*, 313 US 409 (1941). *Morgan* disapproved of the interrogation of a cabinet officer "to probe [his] mental processes" in making a certain rate order. Our requested evidentiary hearing would have been directed to whether an order was actually made, not the thought processes behind it.

In *United States* v. *Johns* (G 80-72CR, decided November 7, 1974), not only did the District Judge[3] refuse an evidentiary hearing, but denied a request for Mr. Mitchell's handwriting exemplars in the face of an offer to prove that Mr. Mitchell was in California on the day he

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[1] In *Olweiss* and *Anzunziato*, cited by respondent at p. 3, no conspiracy was charged. In *D'Amato* the conspiracy was charged and proven. We cannot comment on *Oliva* since the not-yet-published opinion is unavailable to us. (Shouldn't the rules of this Court require that if a party refers the Court to an opinion not available to his opponent that a copy of the opinion be furnished at the time of service of the pleading which cites it?)

[2] None of the cases actually cited at p. 5 of the response are in point.

[3] Hon. Wendell A. Miles, Western District of Michigan. The unreported opinion reads:

> Defendants herein have moved to suppress the evidence gained through wire interceptions, contending that the interceptions were not authorized in the manner required by Title III of the Omnibus Crime Control Act of 1968. The government has responded with

(continued on next page)

allegedly initialed the authorization, and his disputed initials contained obvious pen lifts.

Respectfully submitted,

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Detroit, Michigan, November 20, 1974.

(*continued from preceding page*)

the affidavits of John N. Mitchell, Henry E. Peterson and Harold D. Shapiro which tend to show that the proper procedure was followed. Defendants have also moved for reconsideration of this Court's denial of an evidentiary hearing on this question.

At this time, the Court finds no reason why it should not accept the affidavits which have been submitted in this regard. Nor does the Court see any necessity to compel a former cabinet rank governmental officers, and others, to appear and testify regarding matters which are already covered in affidavits. This is particularly so in light of the gratuitous statements by defense counsel to the effect that they refuse to believe Mr. Mitchell's statements, irrespective of the manner in which they are made.

Accordingly, these motions for suppression and for reconsideration are denied.